



**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

**[EPA-R07-OAR-2021-0171; FRL-10023-93-Region 7]**

**Air Plan Approval; Nebraska; Revisions to Title 115 of the Nebraska Administrative Code; Rules of Practice and Procedure.**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve revisions to the State Implementation Plan (SIP) submitted by the State of Nebraska on September 24, 2020. This final action will amend the SIP to revise the Nebraska Administrative Code "Nebraska Rules of Practice and Procedure." These rules describe the procedures the Nebraska Department of Environment and Energy (NDEE), formerly the Nebraska Department of Environmental Quality (NDEQ), will follow for proceedings under the Administrative Procedure Act. These proceedings include contested cases, rulemaking petitions, and declaratory rulings among others. The revisions consolidate five chapters into a single chapter by removing duplicative language and incorporating by reference model rules of agency procedure promulgated by the Attorney General for agency use in accordance with the Administrative Procedure Act. The revisions also update language; renumber chapters; and make minor wording changes. The changes do not substantively change any existing statutory or

regulatory requirement or impact the stringency of the SIP or air quality, do not revise emission limits or procedures, nor do they impact the State's ability to attain or maintain the National Ambient Air Quality Standards.

**DATES:** This final rule is effective on **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R07-OAR-2021-0171. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov> or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional information.

**FOR FURTHER INFORMATION CONTACT:** William Stone, Environmental Protection Agency, Region 7 Office, Air Quality Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551-7714; email address: [stone.william@epa.gov](mailto:stone.william@epa.gov).

**SUPPLEMENTARY INFORMATION:** Throughout this document "we," "us," and "our" refer to the EPA.

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## **I. What is Being Addressed in this Document?**

EPA is amending Nebraska's SIP to include revisions to title 115 of the Nebraska Administrative Code. The EPA is approving revisions to the Nebraska SIP received on September 24, 2020. The revisions are to Title 115 - Nebraska Rules of Practice and Procedure. These revisions are described in detail in the technical support document (TSD) included in the docket for this action. The EPA solicited comments on the proposed revision to Nebraska's SIP, and received no comments.

## **II. Have the Requirements for Approval of a SIP Revision Been Met?**

The state submission has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submission also satisfied the completeness criteria of 40 CFR part 51, appendix V. The state provided public notice of the revisions from February 28, 2019, to April 2, 2019, and held a public hearing on April 3, 2019. The state received no comments. As explained in more detail in the TSD which is part of this docket, the SIP revision submission meets the substantive requirements of the Clean Air Act (CAA), including section 110 and implementing regulations.

## **III. What Action is the EPA Taking?**

The EPA is taking final action to amend the Nebraska SIP by approving the State's request to revise Title 115 - Nebraska Rules of Practice and Procedure. Approval of these revisions will ensure consistency between state and federally-approved

rules. The EPA has determined that these changes will not adversely impact air quality.

#### **IV. Incorporation by Reference**

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the Nebraska Regulations described in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region 7 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

Therefore, these materials have been approved by the EPA for inclusion in the State Implementation Plan, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.<sup>1</sup>

#### **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is

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<sup>1</sup> 62 FR 27968, May 22, 1997.

to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is

published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: \_\_\_\_\_

May 11, 2021.

Edward H. Chu,  
Acting Regional Administrator,  
Region 7.



For the reasons stated in the preamble, the EPA amends 40 CFR part 52 as set forth below:

**PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart CC-Nebraska**

2. In §52.1420, the table in paragraph (c) is amended by:

a. Revising the entries for "115-1", "115-2", and "115-3";  
and

b. Removing the entries for "115-4", "115-5", "115-6",  
"115-7", "115-8", "115-9", and "115-10".

The revisions read as follows:

**§52.1420 Identification of plan.**

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(c) \* \* \*

**EPA-Approved Nebraska Regulations**

Nebraska citation	Title	State effective date	EPA approval date	Explanation
STATE OF NEBRASKA				
Department of Environmental Quality				
* * * * *				
Title 115—Rules of Practice and Procedure				
115-1	Adoption of Model Rules	6/24/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	
115-2	Confidentiality for Trade Secrets	6/24/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	

Nebraska citation	Title	State effective date	EPA approval date	Explanation
115-3	Public Hearings	6/24/2019	[insert date of publication in the Federal Register], [insert Federal Register citation]	
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[FR Doc. 2021-10360 Filed: 5/17/2021 8:45 am; Publication Date: 5/18/2021]